COURT NO. 2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 962 of 2001
(Old No. 358 of 1995)

State of U.P.
Collector Dehradun & others. … **Appellants.**

Versus

Sri Jai Narain Bansal
and others. …. **Respondents.**

Coram: Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This is an appeal under Section 54 of the Land Acquisition Act against the judgment and award, dated 8-4-1993 passed by III Additional District Judge Dehradun, in Land Acquisition Case No. 207 of 1990, Jai Narain Bansal and others Vs. Collector and others, whereby the learned Judge has awarded compensation @ Rs. 3,60,000/- per acre, minus the amount already received under the awards of S.L.A.O., with costs, solatium, interest, etc. as mentioned in the impugned order.

We have heard learned Standing Counsel for the State-appellants at length and have considered the entire material before us.

In this appeal, the main contentions raised before us on behalf of the appellants are firstly, that the exemplar sale-deed relied upon by the learned reference court is not proper on the face of record and secondly, that the imposition of interest at the rate of 9% per annum from the date of dispossession is not sustainable. We have thoroughly considered the arguments advanced on behalf of the State and have carefully scrutinized the entire record including the impugned judgment and order of the Reference Court.

On the reference being made by the Special Land Acquisition Officer before the District Judge, Dehradun, the case was ultimately heard by the then III Additional District Judge, Dehradun (***in short the Judge***). The Reference Court has framed the Issue No.1 to the following effect:

> ***"Whether the compensation awarded by S.A.L.O. is inadequate? If so, what is proper amount of compensation?***

For just decision of this appeal, discussion of findings recorded by the learned Judge is necessary. We find that the reference court has dealt with all the exemplar sale-deed relied upon behalf by the S.L.A.O. before the learned Judge. This exemplar sale deed is dated 12.4.1988, which is paper no. 19-C on the record of the reference court. The petitioner-respondents have resisted this sale-deed on the ground that this sale deed has been executed at a low price and the land there-under situated had no approach road from the main road, while the case of the land under acquisition was quite different. In support of their case, on of the petitioner Om Prakash Bansal has been produced as P.W.1, who has elaborately narrated the situation of the land in question vis-à-vis the land under exemplar sale deed aforesaid. It is clear from the record that the disputed land is situate in Abadi area. This witness has stated in his evidence that a number of industries are situated ahead of the acquired land towards Vikasnagar side. He has further stated that the acquired land had rich potential value for construction as well as for commercial purpose. P.W.2, Anup Mittal, who is husband of Smt. Richa Mittal, has also been produced by the petitioner-respondents to testify the dimensions of the exemplar sale deed, because under the exemplar sale deed the land was purchased by St. Richa. He has stated that the land purchased by his wife had no approach road and facility of water. This witness has fully corroborated the contentions of the respondents before the learned Judge. One Satya Prakash Sharma has also been produced as P.W.3, who is attesting witness of the agreement of sale, paper no. 40-B After considering the entire

material, the learned Judge has observed that ***"There is no denying the fact that the land sold under the exampler sale-deed dated 12.4.1988 adjoins the acquired land on its back side. Since the land sold under the exemplar sale-deed had no approach road and the acquired land is situated at Dehradun Chakrata highway, enhancement of ten per cent in the price fetched by the exemplar sale-deed dated 12-4-1988 should have been done to calculate the market value of the acquired property."***

From the above discussion, it is evident that the exemplar sale-deed relied upon by the Special Land Acquisition Officer has been upheld by the learned Judge and has been made the basis for determination of market value of the land. The learned Judge has also taken into account the fact that the land under acquisition was of greater potential value than the land sold in the exemplar and as mentioned earlier, the land under exemplar had no approach road and the purchaser of that land had to purchase further land for construction of approach road. Further-more, after considering the entire evidence on record, the leaned judge has rightly come to the conclusion that the market value, ought to have been increased by ten per cent of the sale consideration of the exemplar sale-deed, therefore, the learned Judge has rightly observed in the impugned judgment that "***the market value of one acre land assessed at the rate of the exemplar sale-deed come to Rs. 3,26,666/-. After ten per cent enhancement the market value calculated at the rate of the exemplar sale-deed comes to Rs. 3,59,2326/- or say Rs. 3,60,000/- per acre."*** Accordingly, the learned Judge has assessed the market value of the acquired land @ **Rs. 3,60,000/-** per acre, as mentioned earlier.

The next point argued by the learned counsel for the appellants is that the learned Judge fell into error in awarding the compensation at the flat rate, while the Special Land Acquisition officer had awarded compensation by dividing the land acquired on the basis of the quality etc. of the soil of the land, as the land of the

petitioner-respondents was being used for the purposes of agriculture. The learned Judge has disagreed with the findings of the Special Land Acquisition Officer on this score and has given cogent reasons therefore. On this point, while dealing with the evidence, the learned Judge has observed as under:-

> ***"The existence of factories, residential houses, availability of al amenities, existence of schools indicates that the acquired land had tremendous potentiality for being used for residential, commercial and industrial purposes. It is significant to mention that the land of the petitioner is situated in a compact block. Since the acquired land has the potentiality for being used for residential, commercial or industrial purpose, it can be treated to be land of the nature likely to be used for building purpose…. ….compensation has to be granted at one and the same rate. Classification of land by the S.L.A.O. on the basis of agricultural quality is erroneous."***

After scrutinizing the entire material on record, we agree with reasons given by the learned Judge/reference court for awarding the compensation for the entire acquired land on the flat rate. We find nothing favorable to the appellants on this score. We are also of the opinion, that the interest awarded at the rate of 9% per annum by the reference court is proper in the circumstances of the case, as at that time higher rate of interest was prevailing in the market.

Learned counsel for the appellants further submitted that the rate of interest has been wrongly awarded and it ought to have been not enhanced, as the S.L.A.O. has already awarded interest @ 9% per annum from the date of possession till the date of award. From the impugned order, it is clear that the learned reference court has awarded interest @ 12% per annum from the date of notification till the date of dis-possession, i.e. 16.12.1989. Thereafter, the interest has been awarded @ 9% per annum. After expiry of the period of one year, the interest has been ordered to be

paid @ 15% on the extra amount alone awarded by the reference court, therefore, payment of interest on the rates mentioned in the impugned order only makes a meager difference, as now the enhanced rate of interest remains to be paid on the extra amount of the compensation amount.

Ultimately, in any view of the matter, we do not find any illegality or infirmity in the impugned judgment and award. The appeal is devoid of merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

27-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP